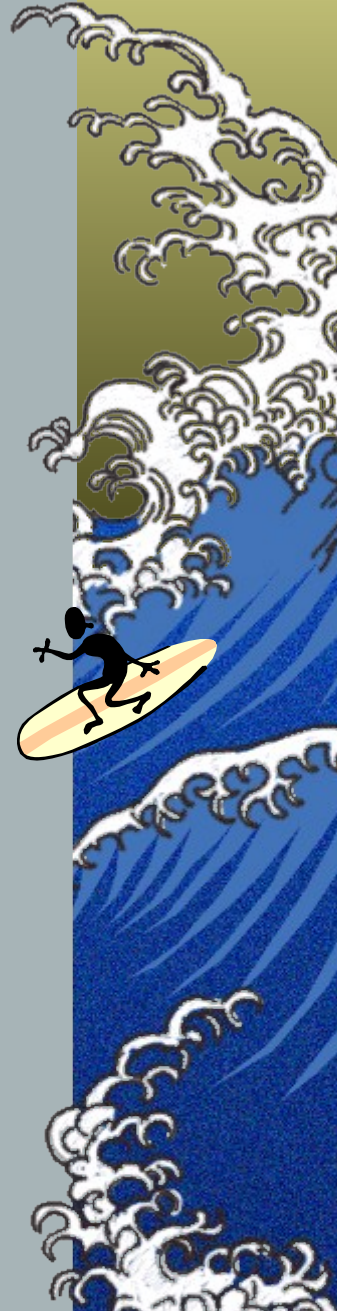


# Real Estate Administrative Expenses - **Where's the Beef?** -

S. Janice Howell  
& Nickie Perry  
RE CoP Conference  
May 2004



# Breakout Session Outline for “Admin Fees: Where’s the Beef?”

- ✦ *Identify how policy was developed*
- ✦ *Give synopsis of policy*
- ✦ *Share what RE’s collected to date*
- ✦ *RE methods of supplementing \$ Pie*
- ✦ *Questions/Answers*



# Rules of Engagement

**Used by M&D vertical team (including all MSCs and HQ) to develop Adm Fee Policy:**

- ▶ Be Non-confrontational – We are a Team
- ▶ Maximize our time Together
- ▶ Think Outside the Box
- ▶ Be Legal
- ▶ Be Corporate
- ▶ Be Creative
- ▶ Remember Change Happens



# Guiding Principles

- ▶ We may have the authority to collect both consideration and administrative expenses for outgrants and disposals but we are not going to charge both in all situations
- ▶ The primary beneficiary pays administrative expenses
- ▶ Specific authority limitations, public benefit and support of Army missions will be factors in deciding when to collect administrative expenses
- ▶ Administrative expenses do not = consideration
- ▶ Mitigation damages (if any) are separate from consideration and admin expenses.
- ▶ Share process on consideration collection includes 10% embedded - except disposals.



# **Adm Fees: What has RE collected to date?**

*Civil Only (still querying military data)*

|              | <u>FY02</u>  | <u>FY03</u>  | <u>FY04*</u> |  |
|--------------|--------------|--------------|--------------|--|
| <b>LRD</b>   | \$194,895    | \$312,928    | \$284,609    |  |
| <b>MVD</b>   | 8,450        | 3,846        | 28,028       |  |
| <b>SAD</b>   | 326,280      | 644,815      | 687,234      |  |
| <b>NWD</b>   | 102,093      | 66,742       | 29,795       |  |
| <b>POD</b>   | 0            | 0            | 0            |  |
| <b>SPD</b>   | 0            | 0            | 300          |  |
| <b>SWD</b>   | 86,601       | 305,371      | 344,688      |  |
| <b>NAD</b>   | <u>4,905</u> | <u>4,690</u> | <u>810</u>   |  |
| <b>TOTAL</b> | \$1,441,543  | \$2,672,094  | \$2,749,817  |  |

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Say 1 FTE=\$100K, then \$2.7M adm fee = 27 FTE  
just for Civil adm fee collections for FY04 to date.

\*data as of Apr 04

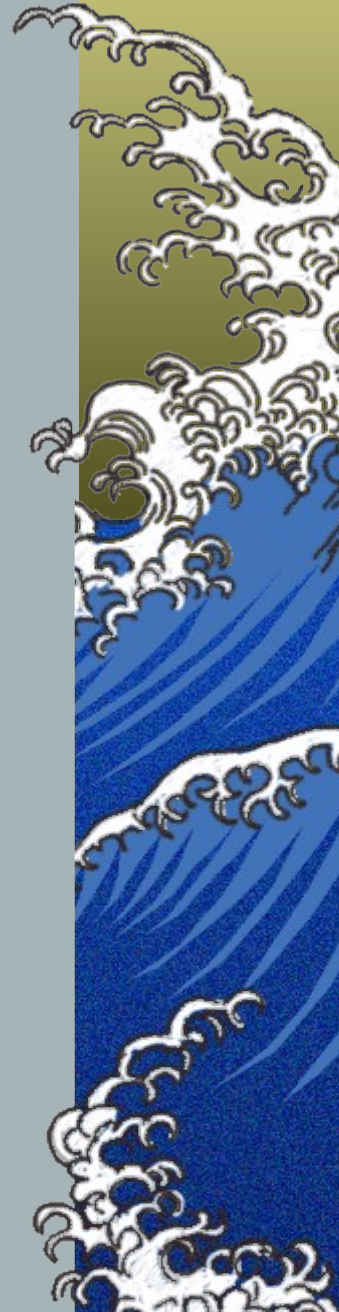
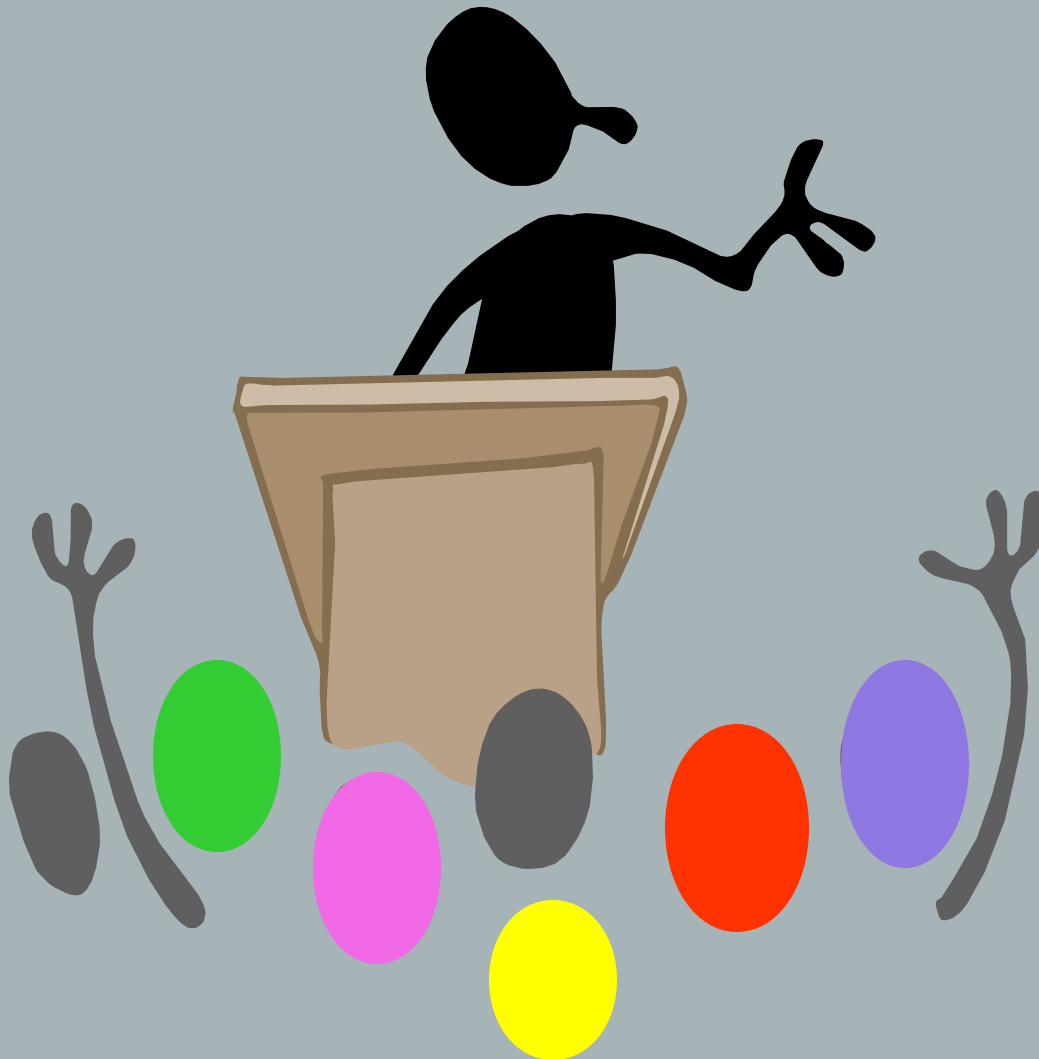


# **RE Methods of Supplementing the \$ Pie:**

- ▶ Actual Cost for Adm Fees (outgrants, exchanges, disposals)  
(*CEFMS collection type: REAF for civil and COA for military*)
- ▶ Mitigation damages (*defined/quantified by Ops or Installation*)
- ▶ Collect/disburse 10% of FMV as embedded management fee
  - ▶ In place now-SOP to come (*CEFMS collection type: REEF*)
  - ▶ Estimate 10% of Corps RE annualized \$ rent is: \$2.13M  
(*civil and military - \*\*See handout spreadsheets\*\**)
- ▶ Can be part or all In-Kind Consideration
- ▶ Streamline processes (*ie. REDI, web templates, delegations*)
- ▶ Seeking disposal delegation of authority to lowest level with QA



# QUESTIONS??



## Chapter 8

# Outgrants



## **8-71. Documents Provided by Non-Army Party.**

- ▶ **The non-Army parties that initiates an outgrant **may** defray administrative expenses by providing non-internal work products which result in a report or written document:**
  - ▶ Such as appraisals, surveys, mapping, legal descriptions suitable for recording in the local land records, and environmental, cultural and historical assessments.
- ▶ **The Army proponent will assure completion of the required supporting documentation and should ensure that the products supplied by the non-Army party are in accordance with our requirements.**
- ▶ **The non-Army party may use their own staff, outside contractors or the Corps to do the work.**
  - ▶ Any work done by the Corps for the non-Army party would be performed under Work for Others rules



# **8-71. Documents Provided by Non-Army Party.**

- ✦ **Or the Army proponent may do the work, if funds are available or on a reimbursable basis if the outgrant:**
  - ✦ **benefits the Army proponent,**
  - ✦ **was initiated by Army or**
  - ✦ **the initiating non-Army party is unable to provide these products,**
- ✦ **Refer to AR 200-1 for policy on environmental assessments.**
- ✦ **The Army must do those inherent governmental functions, such as internal review, policy reviews, decision making and the processing of the documents through Army channels, as required.**
- ✦ **Administrative expenses will be based on the work effort performed by the Army.**



## **8-72. Consideration and Administrative Expenses.**

- ▶ **Consideration is defined as:**
  - ▶ **Something of value (at least to the parties) that is given in exchange for the performance or promise of performance by the other party (such performance itself is consideration) or for not doing an act (forbearance).**
  - ▶ **Consideration does not have to be cash and can include some benefit that arises to the party to whom they are made, or a third party at his instance, or some detriment sustained or inconvenience to the party making them.**
- ▶ **Consideration for an outgrant is also called rent**



# **8-72. Consideration and Administrative Expenses.**

- ★ **Administrative expenses are a cost associated with entering into the transaction - but for the transaction we would not have the expense.**
  - ★ **Does not include things we would do in the ordinary course of business whether or not we had the transaction.**
- ★ **Examples - performed by contract or in-house:**
  - ★ **BEFORE:**
    - ★ **Appraisals, surveys, mapping, legal descriptions environmental, cultural and historical assessments for this action.**
  - ★ **AFTER:**
    - ★ **Management, compliance inspections, handling of potential disputes, interface with the grantee, and other oversight duties.**



## 8-72. Consideration and Administrative Expenses.

### ✦ Consideration:

- ✦ Army property is authorized for use by others who pay consideration, in cash or other means.
- ✦ Consideration is cited in the outgrant document.

### ✦ Administrative Expenses:

- ✦ Section 2813 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105-85, codified at 10 U.S.C § 2695, states that administrative expenses incurred in entering into an easement, lease or license to a non-Federal entity or person **may be collected** from the grantee and retained and credited into the account or fund from which the expenses are paid.

Not mandatory



## **8-72. Consideration and Administrative Expenses.**

- ✦ **Administrative Expenses to execute the transaction should be collected in advance**
  - ✦ If collection will be after cost is incurred, applicant/grantee should execute a letter of intent showing estimates of costs prior to action
- ✦ **Administrative Expenses for management and other oversight duties to be retained in future years from cash rental are not collected in 1<sup>st</sup> year.**
- ✦ **All expenses may, however, be recovered at the time the action is initiated if expenses can be adequately assessed at that time or there will be no annual rent**
- ✦ **Consideration is collected at outgrant execution, in advance of use.**
  - ✦ Specific outgrant authorities may have different standards and legal requirements for consideration.
  - ✦ Refer to each applicable section for each type of outgrant for specifics.



# **8-81. Determination of Consideration and Administrative Expenses.**

- ▶ **Consideration is usually based on Fair Market Value (FMV) appraisals.**
  - ▶ **Refer to ER 405-1-12, Chapter 4**
- ▶ **The District Chief Appraiser may periodically estimate values for**
  - ▶ **Types of outgrants issued for identical purposes in order to**
  - ▶ **Establish a schedule of consideration**
  - ▶ **For example, for an agricultural season at a project or a recurring group.**
  - ▶ **This is not the same as the Administrative Expense Schedule**



# **8-81. Determination of Consideration and Administrative Expenses.**

- ✦ **FMV appraisals are based on market or commercial rent - generally using comparables, though sometimes using a cost or income approach**
- ✦ **Market or commercial rent includes an imbedded administrative cost since the commercial practice is to set rent to include all costs and returns to the landowner.**
- ✦ **For general discussion, rent covers**
  - ✦ **capitalization of the asset, taxes and repayment of financing and equity,**
  - ✦ **estimated cost of fees, management, compliance inspections, potential disputes, interface with the tenant, and other oversight duties.**



# Example

## ▲ Monthly estimate:

|                                                              |       |
|--------------------------------------------------------------|-------|
| Taxes -                                                      | 20    |
| Repairs, costs,<br>return on investment -                    | 60    |
| Mortgage -                                                   | 300   |
| <hr/>                                                        |       |
|                                                              | \$380 |
| Management, inspections,<br>legal fees, travel, time, etc. - | \$40  |
| <hr/>                                                        |       |
| Rent charged:                                                | \$420 |



# **8-81. Determination of Consideration and Administrative Expenses.**

- ▶ **Prior to 1998 and 10 USC § 2695,**
  - ▶ **age-old practices used in private industry, such as embedded management expenses estimates,**
  - ▶ **had no practical application at the field level**
  - ▶ **since any cash administrative expenses collected was deposited into Misc. Receipts.**
- ▶ **Rent has always included both capitalization and administrative portions**
  - 
  - ▶ **we were never concerned with separating since we could not retain either**



# **8-81. Determination of Consideration and Administrative Expenses.**

- ▶ **Administrative expenses -**
  - ▶ whether imbedded or separate -
  - ▶ are a cost associated with entering into the transaction,
  - ▶ but for the outgrant we would have no duty to do compliance and oversight.
- ▶ **Management firms generally charge 10% of rent to manage property for a landlord.**
  - ▶ In order to reflect the commercial practice, we have chosen 10%
    - ▶ different % could be applicable in different markets
  - ▶ **Guidance will be provided on collecting this %**
  - ▶ A higher % may be used, if based on the commercial practice in the area - District should document finding



# **8-81. Determination of Consideration and Administrative Expenses.**

- ▶ **10 U.S.C. 2695 authorizes accepting and crediting into the account or fund from which the expenses are paid**
  - ▶ **for easement, lease or license to a non-Federal entity or person .**
  - ▶ **Does not cover permits to Federal entities**
- ▶ **When the non-Army party provides reports or other work products, this will be considered in determining costs to collect. See Paragraph 8-71.**
- ▶ **Refer to each section as to when these charges are authorized.**



# **8-81. Determination of Consideration and Administrative Expenses.**

## **▲ Administrative Expenses**

### **▲ By schedule**

- ▲ outgrants separated into categories which reflect the common work effort involved in issuing and managing the outgrant.
- ▲ Recurring, routine outgrants
- ▲ Minor Shoreline Licenses
- ▲ **Additional charges may be added for special monitoring/ compliance costs and extraordinary or unusual incidental costs**

### **▲ By Actual**

- ▲ Leases
- ▲ Complex, controversial, precedent setting or unusual outgrants

### **▲ Do not include expenses that**

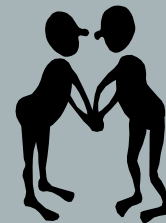
- ▲ DA incurs in ordinary course of business whether or not we had the transaction, e.g. cost of programmatic, project/installation-wide master plans or environmental reviews\*
- ▲ DA incurs to serve independent public interest



# SECTION X

## OUTLEASES - TITLE 10 U.S.C. § 2667

- ▶ Leases issued under 10 USC 2667 are **required** to provide for the payment (in cash or in kind) of consideration not less than the fair market value of the lease interest, as determined by the Secretary.
  - ▶ Competitive leases determine the fair market value through the competition.
- ▶ How administrative expenses will be funded or covered must be established **in coordination with the project or installation**
  - ▶ Should be addressed in the ROA.
  - ▶ A full or partial portion may be collected from the lessee



## **8-126. Agricultural and Grazing Purposes**

- ✦ **Consideration will be FMV of the leased interest, determined through competition**
- ✦ **The district and the project/installation should work together to determine offsets to consideration**
  - ✦ **Don't totally offset the rent if administrative expenses for management and oversight will be covered by the imbedded administrative amount retained from the rent.**
- ✦ **The imbedded administrative expense will be retained from any cash in subsequent years**
  - ✦ **Except for Military, which may elect to pay administrative expenses from the A&G special fund and have all cash rent go to reimburse the fund rather than the district.**



## **8-126. Agricultural and Grazing Purposes**

- ▶ **A&G leases support various installation and project natural resource management plans**
  - ▶ **No separate administrative expense collected from Lessee**
  - ▶ **No processing fee for application packages**



## **8-127. Civil Defense Purposes.**

- ▶ **May be a lease or license**
- ▶ **Consideration**
  - ▶ **for the lease will be FMV of the lease interest**
  - ▶ **for license consideration will depend on the use.**
- ▶ **No additional administrative expenses due to the public interest served**
- ▶ **The imbedded administrative expense retained from FMV rental payment.**



## **8-128. Quarters for State Paid Employees of the National Guard.**

- ✦ **Consideration is the FMV of the leased interest.**
  - ✦ **No administrative expense due to support to NG**
- ✦ **The imbedded administrative expense will be retained.**
- ✦ **Offsets may be applied.**



## **8-129. Public Schools on Military Installations.**

- **FMV of standard elementary to high school level public school leased interest is nominal,**
  - **taking into account the condition of the land granted, restrictions on use, oversight and degree of Army control, termination rights, and limited commercial value or market of the school-use granted.**
  - **If the school wishes additional property or other less restrictive use, then the fair market value must be determined for the changed interest.**
  - **No appraisal is required for the standard school lease.**
- **The consideration received by the Army includes the agreement by the local school district to manage, operate, maintain, protect, repair, and improve the property as a public school for military dependents.**
- **No administrative charge will be made.**



# **8-129. Public Schools on Military Installations.**

- ▲ **Other schools**
- ▲ **Schools under the Continuing Education program are provided no-cost licenses for space in existing buildings - no administrative expenses charged**
- ▲ **Post-high school level schools -**
  - ▲ **Non-exclusive use - license, either no-cost or FMV**
  - ▲ **Exclusive or construction - Lease at FMV of the leased interest, with possible offsets, **plus** an administrative charge, if any.**
  - ▲ **District and the installation should work together to determine whether the schools will**
    - ▲ **also be assessed administrative expenses, either full or partial,**
    - ▲ **OR if the installation wishes to fund the district's administrative expenses. due to mission support**
  - ▲ **Imbedded administrative expense will be retained from any cash rental**



## **8-130. Leases for Banks.**

- ▶ **Non-self-sustaining - Consideration**
- ▶ **Building space - no-cost license for up to 5 years.**
  - ▶ In exceptional cases, a no-cost license may be issued for land when a bank is authorized to construct its own building or to expand, modify or renovate Government space.
  - ▶ Upon determination by ASA(FM) that a bank has become self-sustaining, the no-cost license shall be terminated and a lease shall be issued in accordance with the guidance for self-sustaining banks below.



## 8-130. Leases for Banks.

- ▶ **Self-sustaining - Consideration**
  - ▶ Building space - FMV rent for up to 5 years
  - ▶ If the bank uses its own funds to modify or renovate Government building space or to construct a separate facility, a lease at FMV rent for a term not to exceed 25 years.



## **8-130. Leases for Credit Unions.**

- ▶ **95% membership - Consideration**
  - ▶ Building space by a no-cost license for up to 5 years under authority Federal Credit Union Act - 12 U.S.C. § 1770.
- ▶ **Less than 95% membership - Consideration**
- ▶ **Building space by lease at appraised FMV rent for up to 5 years subject**
  - ▶ If the credit union uses its own funds to modify or renovate Government building space or to construct a separate facility, at FMV rent for a term not to exceed 25 years.



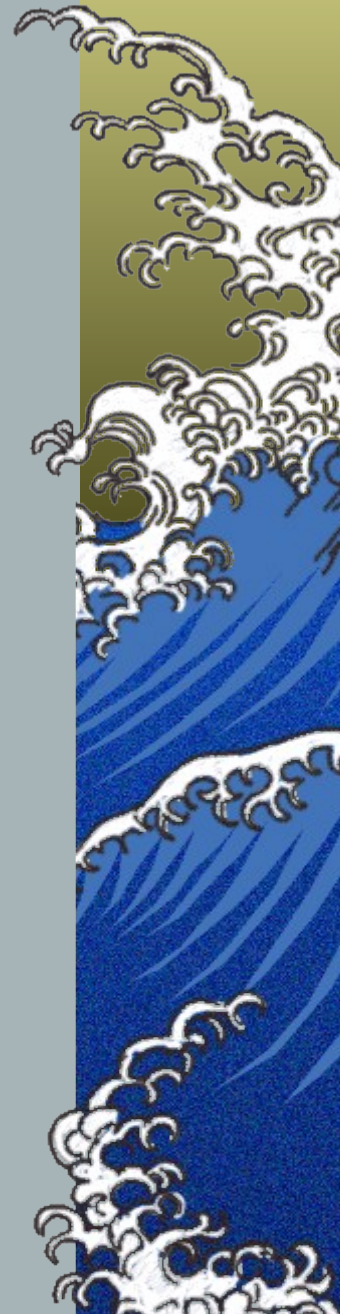
## 8-130. Banks & Credit Unions.

- ▶ **Administrative Expenses**
- ▶ Taking into account imbedded administrative portion of FMV, the district and the installation should work together to determine whether the Bank/CU will
  - ▶ also be assessed an administrative expense, either full or partial, or
  - ▶ if the installation wishes to fund the district's administrative expenses.
- ▶ Collect the consideration **and** the administrative charge, if any.
- ▶ The imbedded administrative expense retained from any cash consideration as a cost of entering into the leasing arrangement.



# **8-130. Banks & Credit Unions.**

- ▶ **FMV can be offset:**
  - ▶ **include items that had an economic impact and were required by Army but are not common in the community, such as**
    - ▶ **longer hours, free checking, interest on balances, lower required balances, overdraft protection.**
- ▶ **The installation Banking Liaison Officer should provide an analysis of the services required by Army and their economic value.**
- ▶ **If FMV is totally offset then Installation must pay District expenses**
- ▶ **HQ is working with the US Army Finance Command, Banking Officer on the consistency issue**



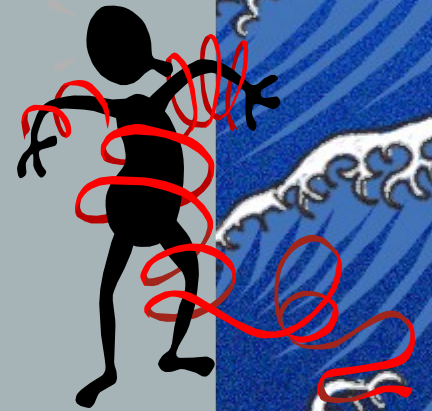
## 8-132. Industrial Facilities.

- ✦ **Consideration - FMV of the leased interest, with possible offsets, **plus** an administrative charge, if any.**
- ✦ **Taking into account the imbedded administrative portion of FMV, the district and the installation should work together to determine whether the industrial lessee will**
  - ✦ **also be assessed administrative expenses, either full or partial,**
  - ✦ **OR if the installation wishes to fund the district's administrative expenses. due to mission support by the lease**
- ✦ **The imbedded administrative expense will be retained from the annual FMV rental as a cost of entering into the leasing arrangement.**
- ✦ **Offsets may need to consider the administrative costs.**



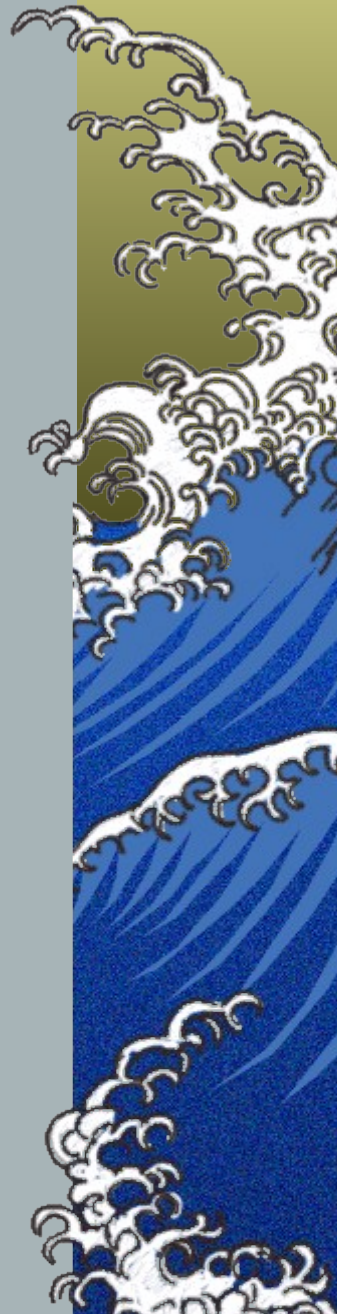
# SECTION XI

## OUTLEASES - EXCESS, SURPLUS AND BASE CLOSURE



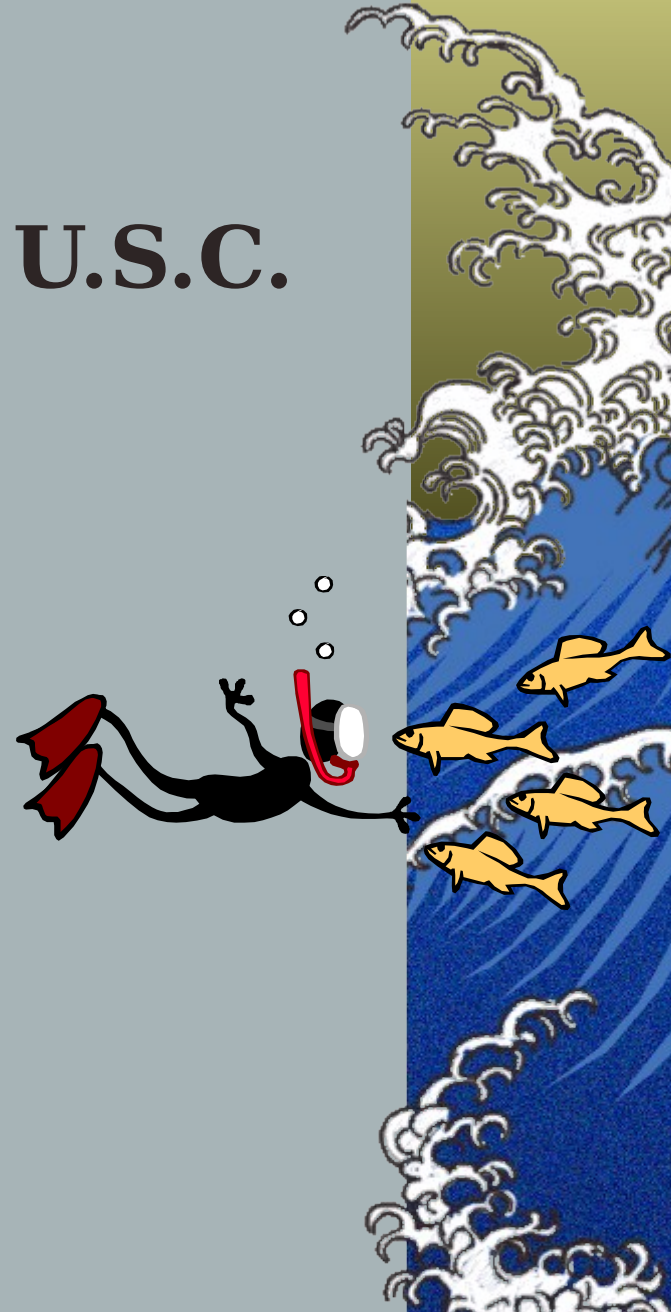
## 8-137. Other Excess Property

- ✦ **Authority - the Federal Property and Administrative Services Act**
- ✦ **Consideration - FMV**
- ✦ **Taking into account imbedded administrative portion of FMV, the district and the installation should work together to determine whether the lessee will**
  - ✦ **also be assessed an administrative expense, either full or partial, or**
  - ✦ **if the installation wishes to fund the district's administrative expenses - due to the cost avoidance of O&M for the excess property.**
- ✦ **Collection of both is encouraged, but the short term market may preclude collection of more than FMV.**



# SECTION XII

## OUTLEASES - TITLE 16 U.S.C. § 460d.



# **8-154. State and Local Government Agencies for Public Park & Recreational.**

- ✦ **Consideration. No Monetary consideration.**
  - ✦ Under 16 USC § 460d - State or local governmental agencies may be granted license or lease without monetary consideration
  - ✦ The consideration is the lessee's obligations to operate and maintain the leased premises for the benefit of the US & the general public.
- ✦ **No administrative fee will be charged due to**
  - ✦ The state or local government's public activity.
  - ✦ Payment of the full fee by a state and local governments would not be in the interest of the program
  - ✦ Exceptions due to unusual circumstances require MSC approval
- ✦ **Lessee may provide reports and documents as set out in 8-71 to defray expenses.**



# **8-155. Leases for Fish & Wildlife, Forests & Other Natural Resources Management.**

- ✦ **Consideration. No Monetary consideration.**
  - ✦ Under 16 USC § 460d - State or local governmental agencies may be granted license or lease without monetary consideration
  - ✦ The consideration is the lessee's obligations to operate and maintain the leased premises for the benefit of the US & the general public.
- ✦ **No administrative fee will be charged due to**
  - ✦ The state or local government's public activity.
  - ✦ Payment of the full fee by a state and local governments would not be in the interest of the program
  - ✦ Exceptions due to unusual circumstances require MSC approval
- ✦ **Lessee may provide reports and documents as set out in 8-71 to defray expenses.**



# **8-156. Leases for Cost Sharing Purposes.**

- ✦ **Recreation Cost Share - No monetary consideration.**
  - ✦ The consideration for a cost-share lease under PL 89-72 and 16 U.S.C. 460d is operation and maintenance of the premises and the operation, maintenance, and replacement of the facilities and improvements during the term of the lease.
  - ✦ Consideration for a lease that cites 33 U.S.C. 702a - 702m is operation and maintenance of the premises and operation, maintenance, repair, rehabilitation and replacement of the facilities and improvements during the term of the lease.
- ✦ **Ecosystem Restoration - No monetary consideration.**
- ✦ **No administrative fee is charged.**



## **8-157. Lease for Commercial Concession Purposes.**

- ★ **The Notice of Availability for Lease advertisement will generally request a payment with all applications to cover administrative expenses to process the package - collected as a separate check.**
- ★ **Consideration.**
  - ★ **No change to GRS and RGRS discussion. Add:**
  - ★ **(4) No additional administrative charge is collected due to the public benefit served to our recreational mission.**
  - ★ **However, the imbedded administrative expense will be retained from each collection of rent as a cost of entering into the leasing arrangement.**



# **8-157. Lease for Commercial Concession Purposes.**

- ▶ **Administrative Expenses for Renewal, Assignments, Sublease, Supplements or Extensions.**
  - ▶ Renewal, extension or assignment
  - ▶ Sublease that adds new business activity
  - ▶ Supplement to add new use or new type of development
- ▶ **District may collect an administrative expense:**
  - ▶ for processing the request;
  - ▶ evaluation of a proposed new Lessee's qualifications and suitability to take over the lease;
  - ▶ Evaluation of the proposed new use or development; and
  - ▶ any environmental reviews.
- ▶ **Could be collected from the new potential Lessee/Sublessee**
- ▶ **Revise Commercial Concession Lease format to add**



# **Limited Motel and Resort Leases to Adjacent Property Owners.**

- ▶ **Special type of Commercial Concession**
- ▶ **Consideration - FMV rental**
  - ▶ Usually most of the revenue generation is on private land
  - ▶ Retain imbedded administrative expense from each collection of rent as a cost of entering into the leasing arrangement.
- ▶ **No additional administrative charge is collected due to the public benefit served to our recreational mission.**



# **8-158. Leases to Nonprofit Organizations for Park or Recreation.**

- **FMV consideration**
  - **but can be reduced or nominal rental in recognition of the public services provided by the lessee, per 16 USC 460d**
- **And administrative expenses of entering into the transaction.**
  - **Waiver of all or part of the administrative expense is authorized when the rent will be reduced or nominal.**
- **Services provided only to members of the non-profit organization do not justify a reduced or nominal rental nor waiver or reduction of the administrative expense.**



# **8-158. Leases to Nonprofit Organizations for Park or Recreation.**

- ▲ **The following criteria will be applied for reductions in rent:**
  - ▲ (1) The organization must be non-profit and functioning in the public interest to provide recreational or educational services of a charitable nature and
  - ▲ (2) The facilities and services will be available for group use only. The use of such facilities must rotate freely among members and guests.
- ▲ **Nominal rent will not be authorized, unless the organization agrees to make the site and facilities available to other non-profit organizations on a first come, first served reservation basis when not scheduled for use by its own members.**



## **8-159. Lease for Private Recreation Purposes.**

- ✦ **Both the FMV rental of the property leased and administrative expenses will be charged.**
- ✦ **The imbedded administrative expense will be retained as a cost of entering into the leasing arrangement.**
- ✦ **Administrative Expense for renewals, extensions, supplements, etc.**
- ✦ **Cottage/Cabin Site Leases.**
  - ✦ **A cottage site lease covered by 16 USC § 460d, as amended by section 1134 of the Water Resources Development Act of 1986,**
  - ✦ **will only reserve fair market value rental regardless of the estimated administrative costs**



## **8-160. Leases to Cooperating Associations.**

- ✦ **No Monetary consideration.**
  - ✦ The consideration is the operation and maintenance of the facilities for the benefit of the United States and the general public in accordance with the conditions set for the in the lease and pursuant to the Cooperative Agreement.
- ✦ **No administrative fee is collected.**



# **8-161. Leases or Licenses for Other Public Use.**

- ▲ **Leases or licenses, if appropriate, may be issued to Federal, state or local governmental agencies for other public use.**
- ▲ **Consideration. No Monetary consideration.**
  - ▲ **Under 16 USC § 460d - Federal, state or local governmental agencies may be granted license or lease without monetary consideration**
  - ▲ **The consideration is the lessee's obligations to operate and maintain the leased premises for the public benefit.**
- ▲ **No administrative fee will be charged due to**
  - ▲ **The state or local government's public activity.**
  - ▲ **Payment of the full fee by a state and local governments would not be in the interest of the program**



# SECTION XIV

## *EASEMENTS*



# **8-174. Consideration, Administrative Expenses and Mitigation of Damages.**

- ▶ **Generally, collect FMV consideration and administrative expenses.**
  - ▶ **FMV Consideration can include utility hookup or reduction of utility charges for the Government's use, if that is a normal practice in the area,**
    - ▶ **for example, a natural gas hookup may commonly be provided to the landowner for a gas transmission line easement.**
  - ▶ **Additional offsets to the FMV consideration can be negotiated**
- ▶ **Retain imbedded administrative expense from any annual FMV rental.**
- ▶ **Collect Administrative Expenses, in advance, if there is no annual cash rental**



# **8-174. Consideration, Administrative Expenses and Mitigation of Damages.**

- ▶ **Monetary consideration may be waived or reduced for easements benefiting the project/installation to**
  - ▶ **Federal, State or local governments,**
  - ▶ **political subdivisions or**
  - ▶ **nonprofit organizations**
- ▶ **However, if the grantee's principal source of revenue is generated through charges made to its customers (similar to those rendered by a profit-making corporation or business), consideration should be reserved.**
- ▶ **Waiver of all or part of the administrative expense, except for environmental costs, is authorized when the rent will be waived or reduced**



## **8-174. Consideration, Administrative Expenses and Mitigation of Damages.**

- ✦ **When monetary consideration is waived, the consideration is the construction, operation and maintenance of the easement and facilities for the benefit of the public and the United States.**
- ✦ **As an exception, in addition to fair market value, charges for surveys, legal descriptions, environmental monitoring, and other identified costs, are mandatory for processing and monitoring construction, operation and maintenance of fuel-carrying pipelines. (See Paragraph 8-181 below.)**



# **8-174. Consideration, Administrative Expenses and Mitigation of Damages.**

- ▲ **Mitigation of Damages is separate from any FMV rent or administrative fees.**
  - ▲ **Require Grantee to repair and mitigate damages caused by the easement**
    - ▲ **To restore the installations or projects to as efficient an operating condition as that which existed prior to easement construction, at the grantee's own expense.**
    - ▲ **Reach agreement on restoration and mitigation, to the satisfaction of installation/project, before the easement is processed.**
  - ▲ **This work is the obligation of the grantee and can not be fulfilled by a cash payment of damages**
    - ▲ **Cash would be deposited into miscellaneous receipts and can not be used to repair the damage - so the installation or project would not be restored.**
    - ▲ **Grantee should do the work through its agents or contractors**
    - ▲ **Grantee may hire us to do work - under a work for others agreement - but should not be required to do so**



# **8-174. Consideration, Administrative Expenses and Mitigation of Damages.**

- ✦ **Repair and mitigation of damages are not consideration for the easement nor an administrative expense.**
- ✦ **Examples of mitigation and restoration (from past cases) are:**
  - ✦ **landscaping, replanting of mature trees or plants**
  - ✦ **road upgrades to handle increased traffic,**
  - ✦ **road maintenance to support grantee's use,**
  - ✦ **road relocations around easement area,**
  - ✦ **replacement of facilities destroyed with same or similar function facilities, (e.g. day use area for a scenic overlook; gate house; fence; ballfield)**
  - ✦ **wetland replacement,**
  - ✦ **wildlife habitat restoration.**



# **SECTION XV**

## **CONSENTS**



## **8-188. Consent To Easement Agreements.**

- ▶ **Consent to another easement overlapping our easement - to protect US estate**
- ▶ **Since no right or interest in real property is granted by consent, consideration is not applicable.**
- ▶ **May collect administrative expense of processing the consent**
  - ▶ **retain under 10 U.S.C. 2695, as an expense incident to the easement transaction**
  - ▶ **but for the easement we would not now have this obligation**



## 8-189. Consent to Structures w/i Easement.

- ✦ Certain easements owned by the US contain restrictions on construction of structures within the easement - right to approve construction was acquired with the easement and should be exercised with caution.
- ✦ Since no right or interest in real property is granted by consents, consideration is not applicable.
- ✦ *An administrative expense may be collected for processing the request, but care must be exercised not to put a chilling effect on people requesting the consent.*
  - ✦ *Use Schedule*
  - ✦ *Reference CW Policy Letter No. 32*



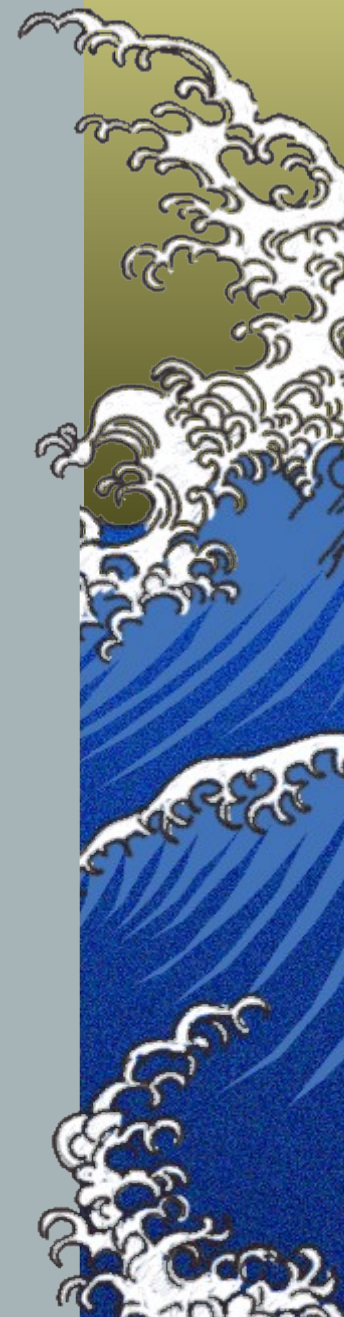
# **SECTION XVI**

## **LICENSES**



## 8-192. Rights-of-entry.

- ★ Rights-of-entry are not technically an outgrant, but are merely a short-term permission to enter the property - similar to licenses.
- ★ A right-of-entry in anticipation of an outgrant will not be given unless it is authorized by the office in which the final outgrant will be executed.
  - ★ The availability process must be substantially complete.
  - ★ Rights-of-entry will be conditioned to clearly show that the grantee is agreeable to all terms and conditions of the follow-on formal outgrant instrument.
  - ★ Administrative expenses may be collected to cover additional effort.
- ★ Other Rights-of-entry - charge administrative expenses and have parties repair damages



## **8-195. Consideration - Licenses.**

- ✦ **Generally - FMV consideration and administrative expense.**
- ✦ **When monetary consideration is waived also waive all or part of administrative expenses**
- ✦ **When no monetary consideration - consideration is the construction, operation and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions in the license.**



# **8-200. Licenses Under the General Administrative Power of Sec Army.**

- ✦ **Granting a license under this authority must directly benefit the project, installation, the public, or the US in some respect.**
- ✦ **No monetary consideration and may waive or reduce administrative expenses**
  - ✦ **due to public purpose to**
    - ✦ **state, local governmental agency,**
    - ✦ **nonprofit corporation or association, or**
  - ✦ **when exercise of the privileges provides sufficient consideration to the United States.**
- ✦ **May waive or reduce monetary consideration and/or administrative expenses if the license supports mission or public.**



# **8-200. Licenses Under the General Administrative Power of Sec Army.**

- ▶ **Special Licenses Granted Under General Administrative Powers of the Secretary.**
  - ▶ **Western Union**
  - ▶ **Use material in Borrow Pits**
  - ▶ **Civil Air Patrol**
  - ▶ **Mineral Exploration on Army-Controlled Lands.**
  - ▶ **Private Organizations on Installations**



## **8-201. Licenses Granted Under Easement Statutes.**

- ▶ **Generally, charge both consideration and administrative expenses - same as for easements.**
  - ▶ **In addition, the grantee should repair and mitigate any damages caused by their activities.**
  - ▶ **Retain imbedded administrative expense from any annual FMV rental payments**
- ▶ **May waive monetary consideration and administrative expenses - see easements,**

**8-174**



# Minor Shoreline Licenses

- ▲ **Generally, charge administrative expenses**
- ▲ **Use Special Fee Schedule**
  - ▲ Itemized (MSC approved) or Flat Rate
  - ▲ Min. of \$50/year
- ▲ **No Report of Availability (approved by Shoreline Management Plan)**
- ▲ **No REMIS entry due to minor nature**
- ▲ **Term - 5 years with options to renew up to 25 years**
  - ▲ Renewal/exercise of option - subject to being in compliance with Licenses, all Lake Regulations, and payment of fee
- ▲ **Not Transferable**
- ▲ **Combined Permit/License format is approved**
- ▲ **Execution may be delegated to qualified individual at the Project or in a RE project office**



# **8-202. License for Fish and Wildlife Management Purposes.**

- ▶ **Consideration. No Monetary consideration.**
  - ▶ Under 16 USC § 460d - State or local governmental agencies may be granted license or lease without monetary consideration
  - ▶ The consideration is the grantee's obligations to operate and maintain the premises for the benefit of the US & the general public.
- ▶ **No administrative fee will be charged due to**
  - ▶ The state or local government's public activity.
  - ▶ Payment of the full fee by a state and local governments would not be in the interest of the program
  - ▶ Exceptions due to unusual circumstances require MSC approval
- ▶ **Grantee may provide reports and documents as set out in 8-71 to defray expenses.**



## **8-203. Licenses to States for National Guard Purposes.**

- **No monetary consideration or administrative charge will be charged.**
- **Grantee may provide reports and documents as set out in 8-71 to defray expenses.**



## **8-204. Licenses to the American Red Cross.**

- **No monetary consideration or administrative charge will be charged.**
- **Installation must be reimbursed for utilities**
- **Grantee may provide reports and documents as set out in 8-71 to defray expenses.**



## **8-205. Licenses to the Young Mens Christian Association (YMCA).**

- **No monetary consideration or administrative charge required,**
- **Installation must be reimbursed for utilities.**
- **Grantee may provide reports and documents as set out in 8-71 to defray expenses.**



# **8-206. Rental Boat Licenses to Adjacent Private Resort Owners.**

- ▶ **FMV rental.**
- ▶ **Taking into account imbedded administrative portion of FMV, the district and the project should work together to determine whether the Resort will**
  - ▶ **also be assessed an administrative expense, either full or partial, or**
  - ▶ **if the project wishes to fund the district's administrative expenses.**
- ▶ **The imbedded administrative expense will be retained from any annual FMV rental payments.**



## **8-207. Licenses to Use Army Reserve Facilities**

- **No charge is required for a short term license issued by the USARC Commander.**
- **May waive or reduce monetary consideration and administrative expenses for public purpose to**
  - **state, local governmental agency,**
  - **nonprofit corporation or association, or**
  - **when exercise of the privileges provides sufficient consideration to the United States**
- **Consideration and administrative charge may be reduced or waived if the license supports our mission.**
- **All other licenses require collection of both the FMV rental and administrative expenses.**



# **8-208. Licenses for Mineral Exploration on Army Controlled Lands.**

- ✦ **Consideration may be waived, if the applicant already has a mineral lease, otherwise fair market value should be required.**
- ✦ **Administrative expenses may be collected.**
- ✦ **Right to explore and conduct geophysical tests**
- ✦ **Should contain a restoration provision which may be supported by a bonding requirement.**
  - ✦ **Restoration provisions should be of long duration because subsidence may not appear until several months after underground explosions carried out by the licensee.**
  - ✦ **Restoration should be done by grantee**
  - ✦ **Restoration is not administrative expenses**
- ✦ **Grantee does not have to promise copy of results**



# **SECTION XVII**

## **PERMITS TO OTHER GOVERNMENT AGENCIES**



## **8-211. Consideration and/or Charge.**

- **FMV consideration for Non-DOD agencies, in their official capacity.**
- **Administrative expenses are normally collected through an Interservice Agreement or other operational agreement, see paragraph 8-212.**
- **The District should work with the installation and project to be sure that the district's services are covered.**
- **The FMV may be reduced: (see list in Chapter 8)**



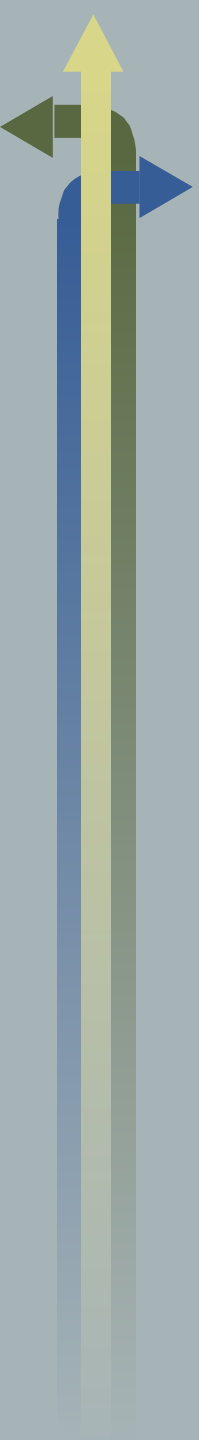
## **8-212. Reimbursement and Other Charges.**

- **Collection of costs for utilities and services furnished to the grantee is the responsibility of the installation.**
- **DOD 4000.19-R governs interservice support agreements which cover utilities, maintenance, and other services furnished by the host department to a tenant activity of another military department.**
- **District has to work with the installation to be sure the agency is not overcharged**



# Chapter 11

## Disposal



# Guiding Principles

- ▶ We have always had the authority to collect both consideration and administrative expenses (aka closing costs) for disposals but we did not collect both in all situations
- ▶ The primary beneficiary pays administrative expenses
- ▶ Specific authority limitations, public benefit and support of Army missions will be factors in deciding when to collect administrative expenses
- ▶ Administrative expenses = consideration



# **Administrative Expenses aka Closing Costs**

- ✦ **10 U.S.C. 2695 - authorizes collection of administrative expenses incurred in entering into an exchange or disposal by Army to a non-Federal entity or person, and conservation groups**
- ✦ **Administrative expense should cover the full cost to the Government for the disposal action.**
- ✦ **Commercial practice for disposals is to collect administrative expenses, as closing costs, in addition to FMV**
- ✦ **Therefore, for disposals, there is no imbedded administrative expenses, as there is with outgrants.**



# **Administrative Expenses aka Closing Costs**

- ▶ **The numerous expenses which**
  - ▶ **buyers and sellers normally incur**
  - ▶ **to complete a transaction**
  - ▶ **in the transfer of real estate.**
- ▶ **These costs are in addition to FMV price of the property and**
- ▶ **Includes items paid at the closing day.**



# **Examples of buyer costs include:**

- **The down payment**
- **Loan fees (points, application fee, credit report)**
- **Prepaid interest**
- **Inspection fees**
- **Appraisal and inspection**
- **Mortgage insurance**
- **Hazard insurance**
- **Title insurance**
- **Documentary stamps on the note.**
- **Buyer's attorney fees**
- **Escrow fees**



# Examples of the Seller costs:

- **Broker's commission**
- **Transfer taxes**
- **Documentary Stamps on the Deed**
- **Title insurance**
- **Surveys and legal descriptions**
- **Property taxes (prorated)**
- **Seller's attorney fees**



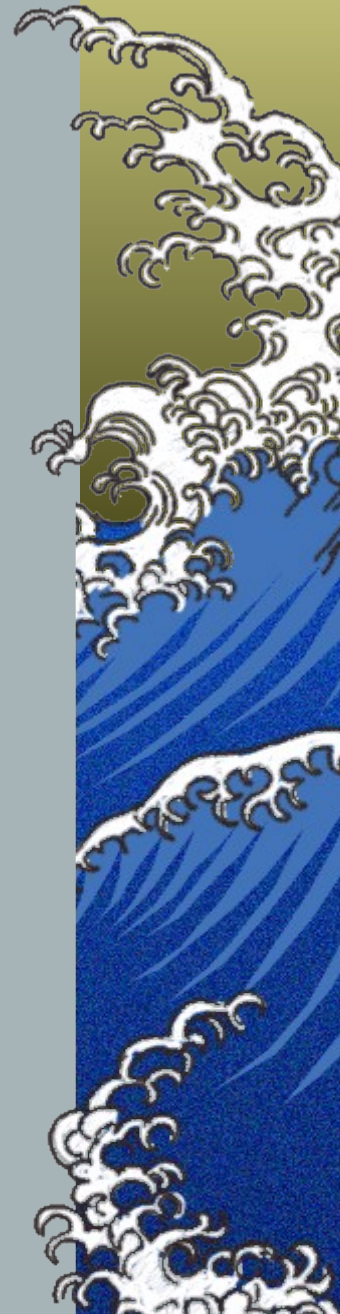
# **Types of Properties Disposed**

- ▶ **Lands**
- ▶ **Lesser Interest, such as easements or leases**
- ▶ **Buildings & other improvements w/o the underlying lands**
  - ▶ **Includes buildings, & improvements in the footprint of construction**
  - ▶ **Can include related personal property**
  - ▶ **Destroyed, altered, or in a deteriorated condition**
- ▶ **Natural Resources**



# **11-63. Fee owned land.**

- **By DA not GSA**
- **Competitive -**
  - **FMV consideration and**
  - **Administrative expenses - set out in Advertisement**
- **Negotiated -**
  - **To public agencies for Public Benefit Conveyances**
    - **No administrative expenses collected**
    - **Usually no monetary consideration**
  - **To private parties**
    - **FMV and administrative expenses**
    - **Disclose administrative expenses as soon as possible**



# **11-64. Easement Land.**

- ▲ **FMV - using before and after - and administrative expenses**
- ▲ **May grant a waiver of all or part of either, documented in the files with justification:**
  - ▲ **When the disposal is primarily for the benefit of the Government,**
  - ▲ **If the underlying fee owner is unwilling to pay the consideration and/or administrative expense, but is willing to pay an amount which the District determines is acceptable or**
  - ▲ **when such charges are not considered appropriate**
    - ▲ **For example, non-use of easement; donation of easement by grantee originally; promises made during original acquisition under older laws**



# **11-64. Easement Land.**

- ✦ **Disposal to a Local Sponsor.**
- ✦ **In cases of local cooperation projects where**
  - ✦ **a local sponsor acquired an easement interest and conveyed such interest to the United States at no cost,**
  - ✦ **such easements may be released to the local sponsor upon their request without payment of monetary consideration if the District determines such action to be appropriate.**
- ✦ **An administrative charge may be charged or waived, as appropriate.**



# **Buildings & Improvements w/o Land Under FPASA**

- **No Administrative expense collected - may share reports/costs - to Federal Agencies**
  - **11-94. Transfer of Buildings and Improvements to Other Federal Agencies.**
  - **11-95. Assignment to Department of Education or Department of Health and Human Services (HHS).**



# **Buildings & Improvements w/o** **Land Under FPASA**

## **▲ 11-96. Sale of buildings and Other Improvements.**

- ▲ To private entities**
- ▲ Competitive sale determines FMV**
- ▲ Plus Administrative Expenses - state amount in Request for Bids.**
  - ▲ the district and the project/installation should work together to determine whether the buyer will**
    - ▲ be assessed an administrative expense, either full or partial, or**
    - ▲ if the project/installation wishes to fund the district's administrative expenses - due to the cost avoidance or benefit from using sale to get rid of the excess property.**



# **Buildings & Improvements w/o** **Land Under FPASA**

- ▲ **11-97. Disposal of Surplus Chapels.** Sold for use as shrines, memorials, or for religious purposes - may collect full or partial administrative expenses
- ▲ **11-98. Abandonment, Destruction or Donation to a Public Body.**
  - ▲ Abandon or demolish - No collection of expenses
  - ▲ Donation to public body - no consideration and the district and the project/installation should work together to determine whether to waive or collect all or part of administrative expense



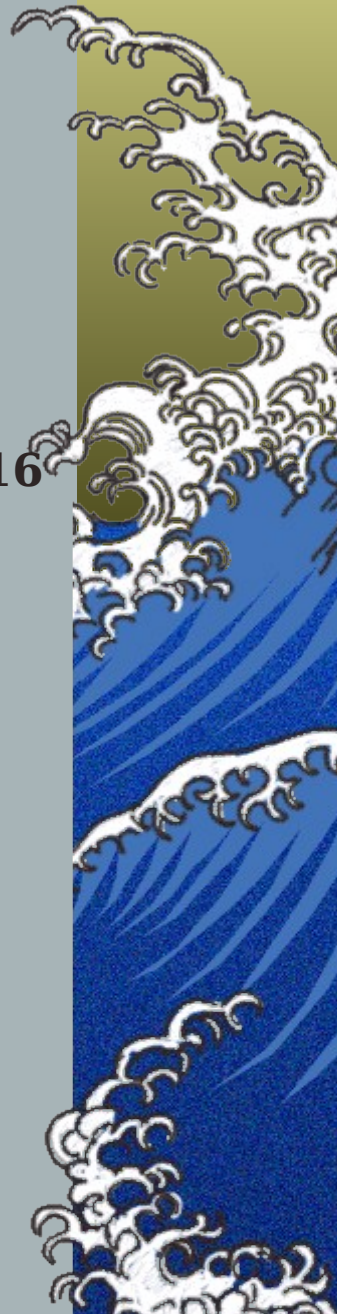
# Section XII - TIMBER DISPOSAL

- ▶ **11-123. Authority.**
  - ▶ **a. Title 10 USC 2665, Military installation**
  - ▶ **b. Title 16 USC 580m, Forest Cover Act, Civil projects**
- ▶ **Competitive sales**
- ▶ **No Administrative Expenses from buyers**
- ▶ **Increased limit for sales by project/installation**



# Section XIII - Special Authorities

- ▲ **Transfers - Without Charge - No Administrative expenses collected**
  - ▲ 11-132. Transfers Among the Armed Services. Title 10 U.S.C. 2571(a)
  - ▲ 11-133. Transfers to Tennessee Valley Authority. Title 16 U.S.C. 831f(b) 11-133.
  - ▲ 11-134. Transfers to Federal Prison Industries, Inc. Title 18 U.S.C. 4122
  - ▲ 11-135. Transfers to Veterans Administration. Title 38 U.S.C. 5003
  - ▲ 11-136. Transfers to Secretary of Transportation and the National Weather Service.
  - ▲ 11-137. Transfers to District of Columbia. Title 40 U.S.C.
  - ▲ 11-141. Interchange of National Forest Lands and Military and Civil Works Lands. Title 16 U.S.C. 505a, 505b



# Section XIII - Special Authorities

## ★ 11-144. Exchange.

- ★ For exchanges other than relocation contracts,
  - ★ an appraisal report will show the relative fair values of the properties to be exchanged.
  - ★ A administrative expenses will be collected from non-Federal entity
    - ★ but may be waived if exchange benefits public or US or was initiated by the DA
- ★ Relocation Contracts
  - ★ no monetary consideration for actual deeds and
  - ★ no administrative expenses collected
  - ★ supports original Relocation Contract obligations



# Section XIII - Special Authorities

- 11-145. Special Disposal Authority.
- Special Continuing Authorities
- Not considered surplus or excess within the meaning of these terms as defined in the Federal Property Act.
  - 11-146. Highway Purposes. Title 23 U.S.C. 317
  - 11-147. Widening of a Public Highway, Street, or Alley.
  - 11-148. Airport Development.
  - 11-149. Development of Public Port or Industrial Facilities.



# Public Benefit Conveyances - FPASA

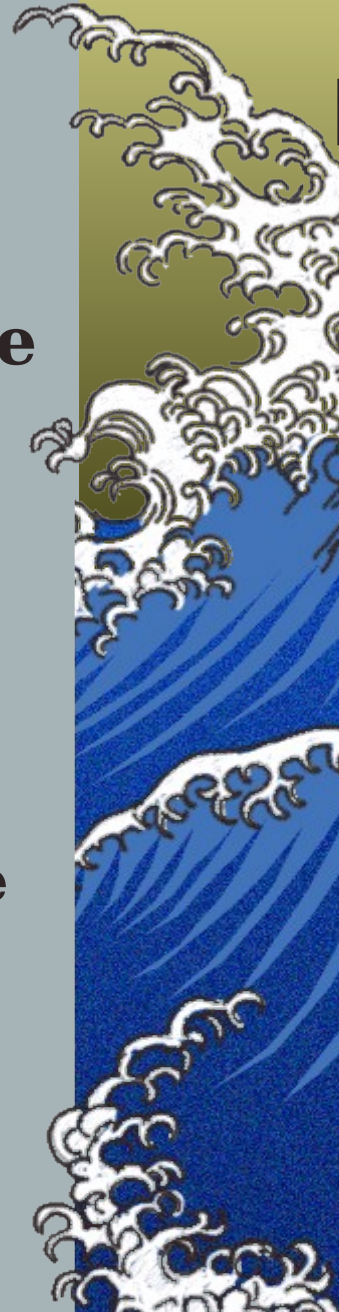
## **11-150. Disposal of Surplus Property by DA to Eligible Public Agencies.**

- ✦ Airports
- ✦ Correctional facilities
- ✦ Health & Education
- ✦ Historic monuments
- ✦ Homeless
- ✦ Law enforcement
- ✦ Park & recreation
- ✦ Ports, &
- ✦ Wildlife conservation
- ✦ **No Administrative Expenses collected**



# Disposals To Local Sponsors

- ▶ **Deeds to local sponsors should site the authority for disposal of the property:**
  - ▶ **When we acquired property on behalf of local sponsor, disposal authority is the legislation authorizing the project**
  - ▶ ***Not* the FPASA of '49**
  - ▶ **The recipient must sign the deed before SA executes it to assure acceptance of the property**
  - ▶ **No administrative expense collected**



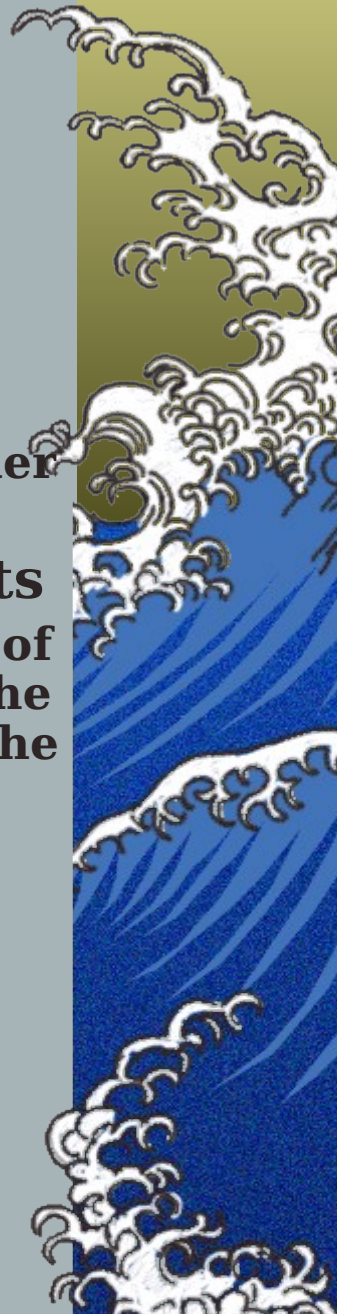
# Special Legislative Disposals

- ▶ Introduced by Congressional reps.
- ▶ Directs disposal of individual properties
- ▶ Authorities depend on wording in legislation,
- ▶ Absent wording to the contrary:
  - ▶ Environmental laws apply
  - ▶ Consideration is FMV and
  - ▶ Charge all or part of administrative expense



# History on Charges

- ★ **Title 31, U.S.C. § 9701 (Independent Offices Appropriation Act of 1952)**
  - ★ charge shall be fair and based upon costs to government; the value of the service or thing to the recipient; the public policy or interest served; and other relevant facts.
- ★ **OMB Circular A-25, revised 8 Jul 93, implements**
  - ★ Not applied where a statute prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited, sale or disposal under Federal surplus property statutes).
  - ★ Charge imposed to recover the greater of cost to the federal government or market value, determined in accordance with commercial rates and prices for similar property in the geographical area.



# History on Charges

- ▶ **DODI 7230.1 now DOD 7000.14-R, Volume 11A, Chapter 4, "User Charges"** implements
  - ▶ States that real estate **leases** shall recover the higher of the fair market value of the asset being leased or the administrative costs of issuing and processing the outgrant.
  - ▶ Charges may be reduced or waived for certain exceptions.



# History on Charges

- ✦ All of the Army's basic outgrant authorities and Disposals fit into the exceptions set out in OMB A-25.
- ✦ Outgrants issued under special authorities may be covered.
- ✦ See each section.

